



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-92-39

FACTS:

You are an appointed state official.^{1/}

QUESTIONS:

1. May you use your official title in endorsing a candidate for public office?
2. May you as a private citizen endorse a candidate, without using your official title?
3. May you use your official title on Christmas cards that you and your spouse send, using your personal funds?

ANSWERS:

1. No.
2. Yes.
3. Yes.

DISCUSSION:

As an appointed state official, you are a “state employee” for the purpose of the conflict of interest law. G.L. c. 268A, §1(q). As such, you are subject to §23(b)(2) of the conflict law, which prohibits every public employee from using or attempting to use “his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.”

The Commission has consistently interpreted this provision to prohibit public employees from using public resources for political or other private purposes. *E.g., Commission Advisory No. 4 (Political Activity)* (1992) (public resources “are intended for the conduct of public business, not for advancing the personal, private or political interests of public employees”); *Public Enforcement Letter 92-3* (“public resources may only be allocated for public business, and may not be utilized to address individual concerns of public employees, even if those concerns are public-spirited in nature”); *EC-COI-92-5* (using state seal or state coat of arms for campaign purposes “benefits a personal rather than a public interest,” hence prohibited by §23[b][2]).

We have previously considered a public employee’s official title to be one of the “public resources” to which this principle applies. Thus, in *EC-COI-84-127*, we advised a judge that he could not use his official title to endorse a commercial product. In *EC-COI-90-9*, we concluded that an appointed state official could not use his official title, among other public resources, to solicit support for a political candidate from his agency’s vendors. *See also EC-COI-92-4.*

An official title does not possess a quantifiable cash value. In such circumstances, we have nevertheless found “substantial value” based on “substantial prospective worth and utility value.” *EC-COI-83-70* (unpaid faculty appointment). *See also In re Burke*, 1985 SEC 248, 251 (access to limited time of hospital executives).

Since your official title, like the state seal in *EC-COI-92-5*, “may foster a sense of credibility” and of official support that your name alone would not, we conclude that its use to endorse a political candidate would be of “substantial value.”² Therefore, §23(b)(2) prohibits you from using your official title to endorse a political candidate.³

On the other hand, nothing in G.L. c. 268A prevents you from endorsing a political candidate in your private capacity — i.e., without using your official title or other public resources. Of course, you remain subject to the other restrictions on public employees’ political activity summarized in our *Advisory No. 4*, including the fundraising prohibitions found in G.L. c. 55 and administered by the state Office of Campaign and Political Finance.

DATE AUTHORIZED: December 10, 1992

¹[footnote omitted]

²By contrast, use of your official title on Christmas cards that you and your spouse send using your personal funds, even if “unwarranted,” would not in our judgment be of substantial value, since this mere greeting would not foster the same sense of credibility or of official support for a private purpose as would use of your title in an unauthorized endorsement or solicitation. Therefore, §23(b)(2) does not prohibit this use of your title.

³This conclusion would not apply to an elected official. An elected official’s title in effect forms an inherent part of his or her political identity because it connotes the important political fact of a successful electoral candidacy and is, in any event, inevitably connected with the elected official’s name in the mind of the voting public. See G.L. c. 54, §41 (identifying the names of elected incumbents on election ballots); *Clough v. Guzzi*, 416 F. Supp. 1057, 1068 (D. Mass. 1976) (three judge court) (upholding constitutionality of this provision, on ground that “the most important decision which the voter must make is whether to retain or to replace the incumbent”). Cf. *EC-COI-92-12* n.10 (suggesting that, although §23(b)(2) prohibits certain solicitation of political contributions by appointed public employees, such solicitation would be “warranted” for elected officials). Furthermore, it would be appropriate for even an appointed official to include a present or former official title as part of biographical information in campaign literature. See *EC-COI-89-31* (§23(b)(2) allows state legislator’s law firm to include his title in press release announcing his affiliation with firm). Cf. G.L. c. 53, §§34, 45 (allowing titles of candidates’ present and former elected and appointed public offices to appear on primary ballots). Of course, we do not suggest that elected or appointed public employees are free to use any other public resources of substantial value for campaign purposes, under any circumstances. See *Advisory No. 4* (1992).